



# City of Carmel

## **Carmel Board of Zoning Appeals Regular Meeting Monday, April 24, 2006**

The regularly scheduled meeting of the Carmel Board of Zoning Appeals met at 6:00 PM on Monday, April 24, 2006, in the Council Chambers of City Hall, Carmel, Indiana. The meeting opened with the Pledge of Allegiance.

Members in attendance were James Hawkins, Earlene Plavchak, Alan Potasnik and Madeleine Torres, thereby establishing a quorum. Christine Barton-Holmes and Mike Hollibaugh represented the Department of Community Services. John Molitor, Legal Counsel, was also present.

Mrs. Plavchak moved to approve the minutes of the March 27, 2006 meeting as submitted. The motion was seconded by Mrs. Torres and **APPROVED 4-0.**

Mrs. Barton-Holmes gave the Department Report. Item 7-8h was two days late with Public Notice. Item 12h had 14 days Public Notice for a Hearing Officer meeting. The Board would need to suspend the rules to hear those two items. The Board would also need to suspend the rules to hear all the Public Hearing petitions for the Public Hearing sign placement. The Department is working on changing the policy and the change will be in effect for the May meeting. Martin Marietta, Item 1-2i, has requested to be heard first. Item 1-4h has requested to be heard last. The Board would need to vote to re-order the agenda. Items 5h and 6h have been tabled.

Mr. Molitor did not have any items for a Legal Report. He suggested the Board go ahead and vote to hear the two items that did not have sufficient Public Notice, so that anyone present for those two matters would be so advised. In view of the crowd, he also recommended re-ordering the agenda to allow Martin Marietta to be heard first.

Mrs. Torres moved to suspend the rules to hear Item 7-8h. The motion was seconded by Mr. Hawkins and **APPROVED 4-0.**

Mr. Hawkins moved to suspend the rules to hear Item 12h. The motion was seconded by Mrs. Torres and **APPROVED 4-0.**

Mr. Hawkins moved to suspend the rules for sign placement. The motion was seconded by Mrs. Torres and **APPROVED 4-0.**

Mr. Hawkins moved to re-order the agenda and hear Item 1-2i first and Item 1-4h last. The motion was seconded by Mrs. Torres and **APPROVED 4-0.**

### **I. Old Business:**

#### **1-2i. Martin Marietta Materials - Mueller Property South**

Petitioner seeks Special Use approvals to establish surface limestone operations & an artificial lake on 96.921 acres ±.

**Docket No. 05090003 SU Chapter 5.02.02 mineral extraction**

**Docket No. 05090004 SU Chapter 5.02.02 artificial lake**

The site is located at the southwest corner East 106th Street and Hazel Dell Parkway.

The site is zoned S-1/Residence - Low Density.

Filed by John Tiberi of Martin Marietta Materials, Inc.

Mr. Molitor stated that it was within the Board's discretion to allow the two sides to take some time to summarize their arguments. The attorneys for each side were prepared to speak 5 to 7 minutes.

Zeff Weiss, attorney with Ice Miller, stated that he had seen Mr. Greg Sovas in the audience, who was here to answer questions for the Board. He would like to present his summation after Mr. Sovas's contributions. If the Board was hearing from each side only once, he would like the remonstrators to go first.

Larry Kane, representing the remonstrators, had no objection to the rebuttal, but general closing statements are done by each side one time without rebuttal. Rebuttals usually come in the Hearing phase.

Mr. Molitor felt that each side could have time for a brief rebuttal if there were issues raised. That would be in the Chairman's discretion.

Mr. Hollibaugh stated that Mr. Sovas was here at the request of the Board to answer questions and his comments would be part of the Staff comments.

Mr. Weiss objected to Mr. Sovas's comments being attributed to the Staff. They did not mind if he was questioned, but he did not feel Mr. Sovas could speak on behalf of the Staff. The Staff speaks on behalf of certain policies of the City and institutional history of the City and how it approaches petitions. Mr. Sovas is an expert hired by the City to present certain information. They would like Mr. Sovas to go before their summation so that they could comment on or cross examine any testimony.

Mr. Molitor suggested that if Mr. Sovas raised some issues, then either side would be given the opportunity to question him.

Larry Kane, 11268 Williams Court, member of the Mining Committee of the Kingswood Homeowners Association and remonstrator. This petition affects the sanctity and peaceful enjoyment of the homes in southeast Carmel. This proposed Special Use involves the routine use of blasting for limestone extraction. It should not be considered within the scope of the mineral, sand and gravel extraction use category that may be discretionarily approved as a Special Use in the S-1 Residential District. Mining with explosives is a heavy manufacturing activity and should not be permissible in S-1. Even if mining by blasting were included in mineral extraction in a residential district, the application should still be denied because the routine blasting by Martin Marietta at its existing site is obviously inappropriate and incompatible with existing residences. Under the Ordinance governing the Board's decision for Special Use, such conclusions warrant denial of the proposed Special Use. At the March 27 Hearing, six neighborhoods to the north and west of the existing open-pit mine represented approximately 1170 families. They described the impacts upon their families and homes as earthquake-like tremors,

shaking homes, tilting pictures on the walls, and rattling dishes. There was some physical damage to homes. Most importantly, children were frightened and parents were exasperated and frustrated. These conditions are not expected within the neighborhoods of Carmel, an aspiring, premier, upscale edge-city in the Midwest. Martin Marietta has brushed off the blasting impacts experienced by the residents as commonplace and insignificant. The new mine would be 40% closer to the nearest residences than the existing 96<sup>th</sup> Street mine. Since no reduction in blasting is proposed by Martin Marietta, the adverse impact on residences, churches and schools would worsen as the current buffer was consumed. These residences existed long before the 1990 Martin Marietta lease with the Mueller Conservatorship. They urged the Board to deny the application. Martin Marietta appeared to claim divine-right to extract limestone wherever they found it along the east side of Carmel. It also should be denied for failing to meet certain criteria specified by the Ordinance for approval. For example: an expansion of blasting would be detrimental, in their view, to neighborhood integrity. The exacerbation of adverse impacts can be expected to induce residents to sell their homes, driving down property values and making home ownership more unstable in the neighborhoods affected. Martin Marietta has asserted that the Board has no right to regulate blasting because of existing State legislation. Martin Marietta's assertion was a smoke-screen and an erroneous ploy. The determination the Board must make under the Zoning Ordinance was not regulation of blasting for protection of public health and safety which is the purpose of State regulation under the Fire Prevention and Building Safety Commission. State regulation does not preclude the Board's consideration of the impact of Martin Marietta's blasting proposal in the context of the Special Use determination. The Board was within its statutory and regulatory authority to consider such impacts. Martin Marietta proposed to comply with the blasting limits in the City's Mining Ordinance, even though they brought about a Court challenge which has brought about a Court order sustaining the enforcement of that Ordinance. Even if the Mining Ordinance were in effect, it does not apply to the current context in which Martin Marietta seeks to expand its blasting operation to a new site. The limit in the City Ordinance is based upon the same national guidelines as the State Ordinance, which is designed to protect only buildings against serious structural damage. Martin Marietta's proposed Special Use should be denied for failing to satisfy the requisite criteria of the Ordinance because the heavy industrial manufacturing nature of the proposed surface mining with blasting explosives is outside the scope of the available Special Use of mineral, sand and gravel extraction in an S-1 District. Or, alternatively it is obviously inappropriate and incompatible with the nearby high-quality residential developments, churches and schools. It is a serious threat to the continued integrity of the nearby residential communities, threatens to lower property values of surrounding properties, and presents an unfavorable cost/benefit ratio. The property values of the surrounding residential properties, as stated at the last Public Hearing, are about \$4.8 million per year paid by residential property owners. If only five percent of that was lost due to the effects of the mining expansion, that would be \$240,000 which is far more than paid by Martin Marietta or the owner of the Mueller South property.

Wayne Phears, attorney for Martin Marietta, placed an easel with an area map in front of the Board. He stated that the remonstrators did not put a shred of property value evidence in this record. Martin Marietta has provided the updated Integra Study that shows that even while all of this has been going on for the last three or four years, property values have continued to rise. He projected Mr. Sovas's statement onto the wall screen stating that he had never encountered a study showing the diminution of property value because of the proximity to a mine. It went on to say that in referring to the first Integra Study that the analysis was very comprehensive and agreed that mining at Martin Marietta had not negatively impacted property values. The Board has to decide this petition on the law and on the record, not on what one group of people in southeast Carmel thinks ought to be done. This is about

what is fair to everybody: the greater Carmel area, Clay Township, the Mueller's and Martin Marietta. This is not a rezoning application, but a Special Use application. He emphasized on the map that the mine has occupied most of the land from below 96<sup>th</sup> Street to 106<sup>th</sup> Street for longer than Kingswood has been there. He thought no one could come in and say that they did not know the mine was there. More importantly, this was the last remaining parcel. They filed all these applications to get this over with at once, as part of long-range planning. No one from Kingswood who saw that empty field could say that they had no idea that it would some day be a mine. The City Council has said that mining is a Special Use in the S-1 District. As long as this property has been in Carmel, mining has been a Special Use in the S-1 District. The entire site, including the existing mine, was zoned S-1. If S-1 was not the right district for this, why was it zoned S-1 in 1997. It was annexed and zoned S-1 then. More importantly, for the past four years the City Council has known this was S-1. The Ordinance makes it a Special Use in the S-1 and the City Council zoned the property S-1. The Ordinance also states that the Board ought to consider Special Uses favorably, denying them only for special or unique considerations. Unfortunately the Board finds themselves in this situation. They do not make policy or decide if mining is a good idea, a bad idea or an indifferent idea. City Council has already made that decision. The City Council set a blasting limit of one-half of the State limit. The commitments, which are extensive, have a commitment of 1800 feet. The remonstrators state that the mine is moving 1300 feet closer. If 1300 feet is a long distance, 1800 feet is further. They always want to minimize the 1800 feet. The math coming closer must be different than the math getting further away from them. The 0.5 limit is built into the commitments. The limit is also half of what Mr. Sovas recommended to the City in the beginning. Spectra reviewed Kingwood's proposed blasting limit and said that neither of the limits could be supported and that no government entity had limits approaching this. If adopted, they could not defend them. The Staff Report issued mining limits (article projected on screen) and 13 or 15 of the 17 had a higher allowed limit than what Martin Marietta had committed. They have come every time with a well thought-out application. They don't bring junk to see what they can get away with. They bring evidence, witnesses, affidavits, and reports. The Board's job is to decide the matter consistent with the law. The Mining Ordinance, in this case, establishes a 500-foot setback, theirs is 1800. It establishes 0.5 blasting limit, they adopted it. In the commitments, they provided a vehicle for a consultant, Mr. Rudenko of Vibra-Tech, to recommend changes to go even lower and to adopt them under various circumstances.

Mr. Potasnik stated that much had been said about the S-1 classification of this parcel. It was his understanding that most large parcels of real estate (one-half to one acre), not zoned commercial, were zoned S-1 because there was no agricultural classification. The west side of the community, because of lack of sanitary sewers, was generally one acre lots.

Mr. Hollibaugh stated that the City does not have a mandatory or imposed agriculture zone. In 2001, the City Council adopted an agricultural classification (AG-1) that homeowners could bring a petition to voluntarily maintain a rural lifestyle. The S-1 throughout the community dates back to early days of zoning in a joinder agreement with Clay Township and the City of Carmel in approximately 1961, when it was extremely rural.

Mr. Potasnik asked about the statement made by Mr. Phears that Special Use should generally be considered favorably and if "generally" was the key word.

Mr. Hollibaugh confirmed that.

Mr. Phears asked if this parcel was in the City of Carmel prior to 1997 and if the parcels outside the City limits were covered under the Carmel Zoning Ordinance because of the joinder agreement.

Mr. Hollibaugh stated that the annexation of the area was in October, 2002. The development restrictions applied inside and outside the City limits because of the joinder agreement. He believed there was a State exemption for mining when it was located outside the urbanized area and was not subject to the Ordinance until the area was annexed. At the last Hearing, he did offer to the Board minutes of the July 1982 meeting where the land in question was in control of American Aggregates. They were before the Board for an appeal of the Director's determination and at that time the attorney for American Aggregates suggested the issue before the Board was not under their jurisdiction because it was outside the urbanized area. He had copies of the minutes for the Board.

Mr. Phears asked if this could have been zoned into any classification when it was annexed.

Mr. Hollibaugh stated to some extent, but to please keep in mind that this petition was filed in December 2002. The City would have had to have its act together. They heard from the Court that they could not mess with Martin Marietta on this petition. It is questionable whether a change in zoning would have had any effect as to whether they would be able to hear this petition.

Mr. Phears asked when the annexation took effect for the record.

Mr. Hollibaugh stated the recorded date was 10-23-02, with a 90-day remonstrance period after that.

The Board was given the copy of the letter from Mr. Weiss which was a summary of Mr. Phears presentation. The letter was dated April 21, 2006, therefore, this was the first opportunity it could be given to the Board.

Mrs. Torres had questions about the definition of mining and blasting being an integral part of mining. On the other side, mining with explosives has been defined as heavy manufacturing which would not be suitable as a Special Use in S-1.

Mr. Weiss stated that the City Ordinance defines S-1 as including mineral extraction as a Special Use. He did not feel there was any disagreement with the Staff that all manner of mineral extraction was permitted in the S-1 District.

Mrs. Torres asked if this was in writing anywhere.

Mr. Weiss stated that it does not distinguish in the Ordinance between any types of mineral extraction. He felt there had been some prior cases before the Board with a stipulation that blasting was an integral part of mineral extraction, certainly with respect to limestone. The very fact that the Staff has reviewed it and put it through TAC and presented it to the Board for consideration confirms that they agree that the extraction of limestone through the blasting process is permitted in the S-1 District. Otherwise, they would have said that it needed a Use Variance. He felt there was no dispute with the Staff or Counsel to the BZA that mineral extraction, including blasting, that they were proposing is permitted in the S-1 District. The issue is whether they meet the criteria set forth in the Special Use Ordinance to justify the issuance of the Special Use permit. There was nothing in the Ordinance that would distinguish blasting from any other type of mineral extraction process in the S-1 District. There was no

Ordinance that would permit it that distinguishes it anywhere. He believed it was in the Staff Report that it was permitted. What was being questioned was the issue of valuation and whether it was obviously incompatible with residential. The City Council has addressed that by putting it specifically in the S-1 District.

Mrs. Torres wanted to know if the City Council intentionally did that with the understanding that blasting was tied in. Surface mining and blasting are different.

Mr. Weiss stated that in the prior petitions with regard to sand and gravel removal, they had heard the same argument from the remonstrators that it was obviously inappropriate and that it was not permitted in the S-1 District. They were raising it in terms of blasting. But the argument really hadn't changed. They were concerned about safety, values, and they found it inappropriate.

Mrs. Torres understood that mining was permitted as a Special Use in S-1, but it was the interpretation of mining they were trying to understand.

Mr. Weiss stated there was nothing in the Ordinance that suggested that blasting was either appropriate or inappropriate in any district. It was all part of mineral extraction which is permitted in the S-1 District.

Mr. Kane responded to the question about the definition. The Zoning Ordinance provides a very general definition that says nothing about blasting. The only place blasting was mentioned within the Ordinance definitions dealt with heavy manufacturing, because it has a connotation of potential danger to public health and safety. Therefore, they felt blasting should be in the heavy industrial category. Regardless of what meaning was ultimately assigned to mineral extraction within the definitions of the Special Uses permitted in the S-1, every decision was case by case. The question of whether or not the proposed use was obviously inappropriate was a case by case determination. The Board has the ability to override the general Special Use categories that are discretionarily permissible. The impact to the surrounding area, from each use, must be decided on a case by case basis.

Mr. Weiss felt Mr. Sovas had some national experience on mineral extraction and what it might be in terms of methodology whether it was sand and gravel or limestone and whether blasting was an integral part of mineral extraction.

Mrs. Plavchak asked for Mr. Sovas's perspective.

Mr. Sovas stated that in his experience it was typically the way Mr. Potasnik explained it. In most zoning kinds of things, he had been involved on the land use side and not the zoning side. Typically parcels would be zoned as they wanted for the use and others would be put into a district and left in that district until something specific came up. In his opinion, not DOCS or anyone else, it was a hold over from rural farming to subdivisions or urban development. In his opinion, the S-1 District was organized for the farmer who might have a small sand and gravel operation on the back the farm, but not necessarily for a quarry. That was his opinion and experience primarily from New York. He was just involved with an S-1 District. It was a sand and gravel mining operation. He couldn't speak to how the City of Carmel defined mineral extraction in terms of its zoning.

Mr. Phears asked if mineral extraction usually contemplated blasting.

Mr. Sovas stated not necessarily, it could or it couldn't.

Mr. Hawkins asked if this was originally agriculture ground.

Mr. Phears objected to Mr. Sovas speaking about the Carmel Zoning Ordinance and stated that Mr. Sovas has less knowledge about the Carmel Zoning Ordinance than he did. He felt Mr. Sovas was speculating about what happened. This had been a quarry and had been brought into the City as S-1.

Mr. Hollibaugh stated that it appeared from the aerial black and white photos that it was farmland.

Mr. Molitor stated that the original legislation that enabled Carmel to have a zoning joinder agreement with Clay Township was passed in 1959. He thought the Zoning Ordinance took effect some time in the early 1960's. To his knowledge the zoning for this particular area had not changed since that time. They were stuck trying to figure out what was in the minds of the Town Council members back in the early 1960's.

Mr. Hollibaugh stated that the zoning hasn't changed, but the area has changed. Gray Road was a gravel road and Hazel Dell was not around until 1997-98. There wasn't a bridge over the White River until the early 1990's. The area was isolated and rural, but over time as the City has grown, the improvements in the infrastructure have grown, too. It was originally rural land that started out with sand and gravel extraction, but it wasn't hardrock mining from the start. Mining can, but doesn't have to, represent blasting. Blasting is not needed for sand and gravel extraction. But when they go from sand and gravel to hardrock mining, blasting has to be dealt with.

Mrs. Plavchak stated that the homeowners that experience the vibrations in their homes were feeling that from the existing quarry. If Martin Marietta were to currently apply the 0.5 PPV, would that still happen?

Mr. Weiss talked off microphone.

Mr. Hawkins duly noted his comments and asked Mr. Sovas to gear his comments to the questions asked.

Mr. Sovas stated that when he first came to Carmel in 2001, there had been a number of complaints about blasting from the homeowners and they have continued over time. Martin Marietta has told them that the PPV is very small, at 0.5 or less in some cases. It has always been Spectra's contention, not DOCS, that there was something else going on. There were too many complaints. He did not mean to suggest that there would not be any complaints from those who would feel the vibrations and the air blasts. What they have suspected is that frequencies are too low in the blasts, so just dealing with the Peak Particle Velocity (PPV) will not take care of the problem. They need to significantly raise the frequencies of the blasts. That was what was shown in the Vibra-Tech report and what they had responded to. Just PPV was only one of the three things that needed to happen. The frequency needed to increase beyond 10 or 20 to the 30, 40 or 50 range and up, so that there was not the resonance frequency of the structures or shaking of the structures. That was shown in the Vibra-Tech report.

Mrs. Plavchak asked if there was an equation that related frequency, PPV and distance and came up with some kind of gauge as to what would be felt. How would changing the distance from the current

location up to the northern part of the proposed blasting change the effects? Going that much further north, would the frequencies have to be 70, 80 or 90 and the PPV go down to 0.2? If everything stayed the way it was, it was logical that the vibrations would get worse. How could the other parts of the equation be changed?

Mr. Sovas stated that was what an isoseismic study does. It tests a number of different parameters such that they would get a minimization of air blast, vibration and good frequency that was beyond the 10. That was a very technical question that he could not answer. The Vibra-Tech report had recommendations on timing of shots, timing of the delay of the shots, the use of electronic detonators, the monitoring of wind and weather when they blast and a couple of others. Theoretically they could blast 250 feet from a structure with less explosive and not cause a problem and they could do that. They have not demonstrated that they can do this at the existing operation. They have not demonstrated that they could keep their frequencies up and that they could minimize air blasts. Therefore, from Spectra's perspective, they could not recommend to DOCS that moving closer made any sense until Martin Marietta could demonstrate that they could do this efficiently and effectively. If they follow the recommendations that are in the Vibra-Tech report that they put in their commitments, if they see 90 days of data, if they see any data from Martin Marietta on blasting that shows that they can improve the situation, then Spectra would have a basis for making a recommendation. Until that time, they could not make a recommendation either way.

Mrs. Plavchak asked if she understood correctly that it was technically possible to move closer and minimize the effects of the vibrations that people are feeling in their houses, but at this point Martin Marietta had not attempted to do that at the current location.

Mr. Sovas stated that they had not given the data to demonstrate that they could do it. Their application at the outset had nothing to say about blasting. It was only after Spectra raised the issue in the November 22 letter and they got a Vibra-Tech analysis on November 30. They raised concerns with that on December 9 and they got another Vibra-Tech letter basically saying they were correct. Spectra had been the one to augment the file with regard to blasting and that was in the packets.

Mr. Phears stated he wanted to question Mr. Sovas after the Board's questions.

Mr. Hawkins asked Mr. Sovas if there was enough data for them to recommend the blasting plan or was there a blasting plan?

Mr. Sovas stated there were some good commitments that were part of the record, but they did not know if Martin Marietta was going to implement those commitments. They did not know if they were going to implement them in terms of their existing operation and Martin Marietta had not given them any data to say that they could do this efficiently and effectively. They were still getting complaints. People may still feel vibrations and complain. It was also true that these standards were developed for structural damage. But they felt that Martin Marietta could do a better job.

Mr. Hawkins stated that the minimum standard being discussed was structural damage. Regardless of what they do there would still be some evidence of the blast to the homeowners.

Mr. Sovas confirmed that.

Mr. Hawkins asked if they had any information on the current blasting.

Mr. Sovas stated they did not. With the exception of the Vibra-Tech isoseismic study, that was the first data they had seen in five years on Martin Marietta. Vibra-Tech was an actual study that was a very good study by a very reputable company. Spectra had brought Vibra-Tech here for a demonstration to the Council and recommended Vibra-Tech to Martin Marietta. Vibra-Tech was the right firm and Spectra had used them extensively.

Mr. Hawkins asked if the Vibra-Tech report was a modeling or was that what was actually occurring.

Mr. Phears stated that it was a model based on an actual event. They had set out roughly 150 seismic monitors and pulled a shot, which was their study shot. Then they could get 150 readings at various arrays on the compass, as well as distances from the shot. That way they could see how a wave propagated. Then they could predict if they did this, how it would affect the propagation of the wave both in terms of frequency and vibration levels. From that they created a vibra-map which was in the Board's materials and it showed the outer limits of the 0.5 contour which fell right in the middle of the Mueller field.

Mr. Hawkins asked Mr. Sovas if, in his opinion, the Board had been given enough information to make a decision or was more data needed.

Mr. Sovas stated that in his opinion more data was needed for him to make a recommendation on blasting issues to DOCS. If the Board needed to make a land use decision in the S-1 District, then that was a different matter.

Mr. Phears stated that they have consistently asked for a target. The Board could not decide on what does or does not irritate a person. They need a target that was not complaint driven. He asked Mr. Sovas if he had helped put the chart together that had the vibration levels.

Mr. Sovas stated that he had submitted a number of documents, but had not created the chart.

Mr. Phears asked Mr. Sovas if human activity levels in a house produced vibration levels that often exceeded the Martin Marietta blasting levels by two or three times.

Mr. Sovas stated that was true, but they were also very narrow. A door slammed may cause even a wall to shake, but not the whole house. It was a different level.

Mr. Phears asked him if he was under the impression that Martin Marietta had not accepted the Vibra-Tech recommendation. He then clarified that they had and they would.

Mr. Sovas agreed because of the language, which stated if it was economically feasible. There was nothing about electronic detonation.

Mr. Phears questioned him about #10 being exactly what Vibra-Tech recommended.

Mr. Sovas stated that it was, but Martin Marietta agreed to it only after the issue was raised.

Mr. Phears stated that if the Vibra-Tech letter was to be a condition, if not satisfactory as laid out, that was fine with Martin Marietta. They would accept it. Frequency levels were mentioned and Martin Marietta has a commitment to use blasting designs to lift the frequency levels to above 20. The achievement or non-achievement of that was one of the review criteria in the annual review which would be done by Mr. Rudenko of Vibra-Tech.

Mr. Sovas agreed, but he had not taken the time to go through the commitments word-by-word. He did not expect to come to the meeting to be cross-examined on the Martin Marietta commitments. He did not agree with the one-tenth of the 0.5 number on the Kingswood slide. He had read the commitments, but was not prepared to talk about the details of every commitment. In the Vibra-Tech report, Spectra had asked repeatedly for a key so that they could see the location. The numbers were so small and hard to read. The air blast numbers showed a significant number over 120, which was a general recommendation of Vibra-Tech. They did not have any idea of where these were in relation to Kingswood or the mine.

Mr. Phears asked if he was aware that the 120 was adopted in the commitments in #5. A reportable event triggers review by Vibra-Tech. He asked what number Mr. Sovas would recommend.

Mr. Hawkins stated that the City had determined that in the Mining Ordinance, which Martin Marietta had an injunction on.

Mr. Phears stated they had the injunction because the financial portions were unworkable and portions were vague. Their commitments were modeled on the Mining Ordinance. They felt City Council should make decisions, not the Director of DOCS.

Mr. Weiss responded on the 90-days of data. They have asked DOCS, as well as the remonstrators, for the criteria for the air pressure, PPV and frequency so that they could look at it and then they would respond. Government should set the standard based upon reasonable industry standards and then businesses should meet it. They should not ask for the data so that it could be cranked down and standards set at the cranked down level. They had agreed to the recommendation by Mr. Rudenko. The problem with sharing the data was that it would get cranked down based on public opinion, rather than objective standards. They would address the objective standards. They have tried to do that by addressing the criteria in the Mining Ordinance that was based on the recommendations of Mr. Sovas. Their petition meets those criteria, as well as adopting the recommendations from Mr. Rudenko at Vibra-Tech. They had tried to address this with objective criteria. They have addressed the issue in their commitments. He felt Mr. Sovas now wanted to see the actual data so that he could say it was not good enough. That was unfair to Martin Marietta.

Mrs. Plavchak asked Mr. Sovas if the numbers for frequency and PPV were determined by the terrain. It seemed to her that underground blasting on flat farmland would have a different level of vibration than the hills of West Virginia with underground coal mine blasting. Coal could be extracted without blasting with strip mining. Are these numbers specific to this area of flat farm land?

Mr. Sovas stated that the isoseismic looks at the terrain and was very specific to the kind of rock and total landscape. The National standards, called a Z curve, were in the Mining Ordinance which showed the relationship between PPV and frequency. Under the curve would be in compliance. They have been talking about optimum numbers to minimize vibration and air blasting. The Z curve is specific to

structural damage in homes, and has been around since the 1980's. In general, they would want to stay away from the structural response at 10 to 20 and that was in the Vibra-Tech report. They seemed to focus on PPV at the expense of frequency and both need to be looked at. The timing of the delays of the shots would get the higher frequencies.

Mr. Hawkins commented that commitment #4 on page 6 does talk about recommendations as Vibra-Tech believes may reasonably be necessary to reflect changes in the state of blasting technology that had become commercially practicable. He felt there were comments that suggested to him that it was not necessarily a commitment, but suggested Martin Marietta would do it, if it worked for them. It was listed under reportable events.

Mr. Phears thought that meant if they were already in compliance, recommendations could be made that they would need to adopt.

Mr. Hawkins was concerned that they do everything practical to satisfy the community and that problems associated with these blasts do not become an issue. He asked if they were using electronic devices for the explosions and how long had that technology been available.

Mr. Phears confirmed that they had been since the beginning of the year. Electronic devices today are different than five years ago when people were experimenting with them. Today they are much more reliable. Each blast is a series of mini-blasts and there may be 40 detonators in a given blast. The advent of digital detonators, as opposed to just truly electric, has made a huge difference and they can be timed much more closely. He felt they were state-of-the-art and they would commit to the Vibra-Tech recommendations.

Mr. Hawkins asked when the lease agreement was made for the property and was there any kind of recordation so that Kingswood or others would have known that property was going to be used by someone other than the Mueller's. Mr. Phears alluded to the fact that they should have known that sand and gravel and mining would be going into the area. But it didn't seem to him that there was much notice of that.

Mr. Phears stated that he believed the lease was signed in 2000. His point was that this was the only tract on the map between 106<sup>th</sup> and 96<sup>th</sup> not a part of the mining operation. Unless a homeowner searched the records and found that the Mueller Conservatorship owned the property and thought they didn't have to worry. Anyone looking at it would see that it was the last tract below 106<sup>th</sup> Street. If they had looked at the Ordinance, it would have told them that it was a Special Use and should generally be considered favorably. The lease was typically recorded in short form. However, most of these people bought their houses before Martin Marietta leased the property. His argument was directed to the fact that this was an overwhelmingly large land use in that area. They were way below the structural limits in terms of vibration levels. Threshold damage was not cosmetic damage. He showed the curve Mr. Sovas had mentioned and discussed the numbers. They must meet all the standards.

Mrs. Plavchak felt that the huge wall of limestone between the current mine and Kingswood should keep the vibration level down and as that was chipped away, there would not be a barrier.

Mr. Phears stated that one of the reasons they put in the standards was because they knew they would be moving closer. They would still be 1800 feet away, which by most standards was a large buffer.

They planned to be state-of-the-art blasting at this site. The issue has always been “where do they have to get to?”

Mr. Phears stated that the question to Mr. Sovas earlier was if they implement all these things and the mine moved closer, could they have a lower vibration level and the answer is “yes.” That was why they got the isoseismic study and committed to all of it.

Mrs. Torres stated that part of the problem was the Board did not have data to know the current conditions, but Mr. Weiss stated they do not want to share it. You say it was under the level for structural damage, but residents have testified to the cracks and damage in their homes. It was not structural, but it was damage.

Mr. Kane felt that Martin Marietta was attempting to maneuver the Board into a deathbed conversion. They resisted throughout this process any kind of meaningful restrictions upon the blasting operations. Kingswood and the City have asked repeatedly for data describing what they currently do. How could they understand the effects of any kind of proposed limits, if they do not know what Martin Marietta currently does? Their proposed commitments are ropes of sand. They have no meaningful commitments. They qualified upon, qualified upon, and qualified upon, various subjective constraints on what kind of ultimate commitment they would have to make to revise or change their mining activity. It did not give any kind of assurance to anyone who was affected by it or to this Board who was asked to decide. They were trying to come to the last meeting and trying to propose some kind of change in their commitments. It was not fair to the remonstrators, the City or the Board. Mr. Sovas stated that the data at this point would not allow him to make a favorable recommendation. So he felt Mr. Sovas would recommend denial.

Mr. Weiss stated that they had not changed their submission since prior to the December 12 meeting when they were prepared to go. They had set forth objective criteria that the Board has and they have also suggested that they would comply with the recommendations of Vibra-Tech. Mr. Sovas did not say he was recommending denial, but that he wanted to see Mr. Rudenko’s recommendations proved out. He thought that if it was proved out, that Mr. Sovas would recommend “yes”. Martin Marietta wanted to know the objective criteria. He felt that Mr. Sovas had said that it was permissible to do it properly and that the recommendation from Mr. Rudenko made sense. If they followed that, they could move closer to Kingswood and other residents. They could then do so in a manner that was consistent within the standards, wouldn’t do any harm and would be very appropriate given the fact that they would have an operating quarry next to a residential community. The only thing they had from the remonstrators was unsubstantiated testimony as to values with no evidence. They had described it as a nuisance and irksome. Martin Marietta still has not gotten the objective standard from DOCS and Mr. Sovas. They have heard that Mr. Rudenko’s recommendation makes sense and if they follow that they should all be comfortable and that this was reasonable for the Board to approve. They could move closer with less impact and that was the design by Vibra-Tech that they would commit to. This was blasting and it was heightened, but the arguments were no different than the ones for the sand and gravel that were approved.

Mr. Hawkins had some questions about the appraisal report. He is an Indiana certified general appraiser, so he can appraise any piece of property in Indiana that he thinks he is qualified. He did not want to get himself into any ethical issues. He was looking at their report and he had not done any on his own. He hadn’t done any analysis or pulled up any data. Looking at the report, he saw on page 14

that the differences were considered to be statistically insignificant when considering the close relationship of Kingswood subdivision with four competing subdivisions. It appeared that Kingswood was exhibiting similar marketing characteristics. They were talking about 40 to 50 basis points or 4 tenth to half a point in difference in appreciation rates. He did some quick math. If a homeowner outside Kingswood owns a home for 30 years and then sells the home for a little over a million dollars, based on the average price of Kingswood right now, a Kingswood home would be at roughly \$861,000. He felt there was diminution of \$140,000 in value over 30 years. In six years, which is a reasonable time for most people, the difference was roughly \$12,000.00. Mortgage brokers giving 6.5 or 6.75 rate, to get a lower rate, would charge points or fees. There was some sort of value component that he felt the report did identify.

Mr. Phears stated that Mr. Hawkins was ascribing that to one thing. If you take any neighborhood in the report and take the highest and lowest, there would be a difference between highest and lowest. He felt the report was making the point that the variation was so small that they could not make a conclusion that the quarry was the reason for the variation.

Mr. Hawkins used the average dollars from 43 re-sales in competing additions and 21 re-sales in Kingswood. There was about a half point difference in appreciation each year.

Mr. Phears stated that the rate of appreciation was slightly different in all the neighborhoods so you did not know what the cause was.

Mr. Hawkins thought that was the point of the report.

Mr. Phears stated that the point of the report was that it was in the range of variation that you would find from neighborhood to neighborhood, regardless of whether you had an external factor like this. All the neighborhoods vary. There was no set appreciation rate for the City of Carmel. He did not think any expert could draw a conclusion that the quarry accounted for the difference. There was not a statistically significant difference that was factored in the numbers.

Mr. Hawkins made a motion in the negative that **Docket No. 05090003 SU, mineral extraction** be declined. The motion was seconded by Mrs. Torres and **APPROVED 4-0**, thereby **DENYING** the petition.

Mr. Molitor stated that the rules allowed the BZA to adopt written Findings of Fact as submitted by the Petitioner, by any interested party or the Board may delegate to Counsel or Staff. He recommended the Board delegate to him the authority to prepare the Findings based on Findings that have been submitted by Remonstrators. The Findings have to be executed by the Chair and the BZA Secretary.

Mr. Potasnik moved that the **Findings of Fact be delegated to the BZA Attorney, Mr. Molitor** for submittal to the BZA for its approval. The motion was seconded by Mr. Hawkins and **APPROVED 4-0**.

Mr. Hawkins moved to table **Docket No. 05090004 SU, artificial lake**. The motion was seconded by Mrs. Torres and **APPROVED 4-0**.

A ten minute recess was taken.

**H. Public Hearing:**

**5h. TABLED - Wal-Mart (Gateway Pavilion)**

The applicant seeks approval for the following development standards variance:

**Docket No. 06030013 V ZO Chapter 23C.08.02.B maximum 120-ft building setback line**

The site is located at 10950 N Michigan Rd. and is zoned B-3/Business within the US 421/ Michigan Corridor Overlay Zone. Filed by Joe Calderon of Bose McKinney & Evans LLP.

**6h. TABLED - Congregation Shaarey Tefilla Synagogue**

The applicant seeks the following Special Use approval for a place of worship:

**Docket No. 06030014 SU ZO Chapter 5.02 Special Uses**

The site is located at approximately 3030 W. 116<sup>th</sup> Street and is zoned S-1/Residence within the West 116<sup>th</sup> Street Overlay. Filed by Joe Calderon of Bose McKinney & Evans LLP.

**7-8h. Frank E Hawkins Addition, Lot 1 - Art Gallery**

The applicant seeks the following use variance and development standards variance approvals:

**Docket No. 06030015 UV ZO Chapter 8.01 permitted uses**

**Docket No. 06030016 V ZO Chapter 27.03 unpaved, uncurbed parking**

The site is located at 220 2<sup>nd</sup> Street SW and is zoned R-2/Residence within the Old Town Overlay – Character Sub area. Filed by Matt & Rachel Frey.

Present for the Petitioner: Matt Frey, 13491 Kingsbury Drive. They have purchased this home to be used as an art cooperative for potentially nine artists. Their current driveway is gravel and they share it with the Historical Museum to the north. There is a 65-year old tree in the central area of the parking area. Pavement would threaten this tree. Paving the lot, the drive and adding the four spots would increase the tenant's rent, which they were trying to keep low to encourage growth in the Arts and Design District. Based on the square footage of the home, he would be allotted four spots, but he would rather add the four spots and pave the lot over time. There would be no changes to the façade except for handicap access. They would be upgrading the landscaping.

**Remonstrance:**

Jane Fleck, 225 1<sup>st</sup> Street SW, asked if this would change the zoning and could it eventually go to a restaurant. She was not concerned with the parking.

Mr. Hawkins stated that the variance would not change the zoning, but would allow this use of an art gallery, if the variance would be approved.

**Rebuttal:**

Mr. Frey stated that he owns Bub's Burgers and her concern was that Bub's was moving a branch to that area, which it was not.

The Public Hearing was closed.

Mrs. Barton-Holmes gave the Department Report. This re-uses an existing house and the variance would allow the continued appearance of a house. The Director of the Carmel Redevelopment Commission sent a letter expressing concern of the gravel parking lot blowing dust across their adjacent AMLI project. There was also a letter from the Carmel/Clay Historical Society that supported the use of the site. There was an email from Scott Brewer, the Urban Forester, expressing concern of a paved lot so close to the maple tree on the site. The Department requested favorable consideration with the condition that the lot be paved within a year. The Ordinance does require the lot to be paved.

Mr. Hawkins asked about the shared driveway and if the Historical Museum had an easement.

Mr. Frey stated it was his understanding from the previous owner that the Historical Museum was blocked in and therefore, they shared the driveway. It would take approximately five years for an art gallery to become profitable, so he was trying to keep the cost of the rent down. With only four spaces, he did not feel that the parking area would be very busy or create much dust or havoc for AMLI. He would appreciate any consideration over time to try to get established and then incur the cost later.

Mr. Molitor stated that the Board could approve a petition for a reasonable period of time and ask that it be reviewed.

Mr. Hawkins stated that at the end of twelve months they would need to get re-approval for the gravel drive or put in some sort of paved drive.

Mrs. Torres asked if Staff would be comfortable with just giving them two years to do the paving, instead of coming back in one year.

Mrs. Barton-Holmes stated that would be a possible way to handle the situation.

Mrs. Plavchak moved to approve **Docket Nos. 06030015 UV and 06030016 V, Frank E. Hawkins Addition, Lot 1 – Art Gallery**, with the **Condition** that the driveway be paved within the period of two years. The motion was seconded by Mr. Hawkins.

Mr. Frey asked if the pavement had to be curbed and if it could be blacktop or concrete curbing.

Mrs. Barton-Holmes stated that it does need to be curbed, but as far as the material, the Ordinance requires a hard material. She suggested talking with Scott Brewer.

Mr. Frey asked if something would change in the area developmentally and ownership would change, would they still need to pave the driveway.

Mr. Molitor confirmed they would because the approval goes with the property.

The motion was **APPROVED 4-0**.

Mrs. Barton-Holmes pointed out that Item 10h had been withdrawn and Item 13h had been tabled.

**9-10h. Old Meridian Professional Building (Pinnacle Pointe)**

The applicant seeks approval for the following development standards variances:

**Docket No. 06030019 V      ZO Chapter 23B.08.01      build-to line**  
**WITHDRAWN Docket No. 06030020 V      ZO Chapter 23B.10.02.B(1)**  
**planting strip**

The site is located at 12065 Old Meridian Street and is zoned B-6/Business within the US 31 Corridor Overlay Zone. Filed by Paul Reis of Bose McKinney & Evans LLP.

Present for the Petitioner: Paul Reis, Bose McKinney, 600 E. 96<sup>th</sup> Street, Suite 500. Mike DeBoy, the Civil Engineer, was also present. An aerial location map was shown. The proposed building will contain 19,250 square feet. He showed the site plan of the proposed building. He indicated the right-of-way line of Old Meridian Street. The proposed planting strip would be within the extensive right-of-way and that was why it was withdrawn. They would be getting an encroachment permit from the Board of Public Works. The building was situated to be consistent with the Old Meridian District and would be near the street. There were parking concerns for the two medical groups that would be occupying the building. In order to meet their parking demands and landscaping, they have proposed to move the building further to the west.

Members of the public were invited to speak in favor or opposition to the petition; no one appeared.

The Public Hearing was closed.

Mrs. Barton-Holmes gave the Department Report. The building's location will be compatible with the Old Meridian Overlay. Even though the building was going to be moved forward, they were going to be able to meet the required number of plantings in the planting strip, hence the withdrawal. She had an email from Engineering indicating that the Petitioner was going through the process to get a permit to encroach within the right-of-way. The Department recommended positive consideration.

Mrs. Torres stated that it is a great building for this location with plenty of plantings.

Mr. Potasnik asked if it met the Ordinance with regard to parking.

Mrs. Barton-Holmes confirmed that it did meet the parking requirements in the Ordinance.

Mr. Reis stated that they had more parking spaces than required because the medical groups were concerned about having adequate parking.

Mrs. Torres moved to approve **Docket No. 06030019 V, Old Meridian Professional Building (Pinnacle Pointe)**. The motion was seconded by Mrs. Plavchak and **APPROVED 4-0**.

**11h. Hay's Addition, Lot 1 - Hair Salon**

The applicant seeks the following use variance approval:

**Docket No. 06030023 UV      ZO Chapter 7.01      permitted uses**

The site is located at 540 W Smokey Row Rd and is zoned R-1/Residence within the US 31 Corridor Overlay Zone. Filed by Susie White & Jennifer Butts.

Present for the Petitioner: Scott Wyatt, Campbell Kyle and Proffitt. The property had remained unused for approximately three years and was in dilapidated condition. They felt it was unused because of its proximity to the commercial zoning in the area. They would be renovating and cleaning up the property. The owner has spoken to the owners in the subdivision to let them know she was coming in. They were not aware of any remonstrance. It was his understanding that they were excited that someone was coming in and cleaning up the property. He showed a site plan. There will be a paved and curbed parking area. The owner has met with Scott Brewer concerning landscaping. There will be signage out front and photos were in the packet.

Members of the public were invited to speak in favor or opposition to the petition; no one appeared.

The Public Hearing was closed.

Mrs. Barton-Holmes gave the Department Report. Since they are maintaining a residential appearance, it should have a minimal impact on the surrounding neighborhood. The Department recommended positive consideration.

Mr. Potasnik asked about the parking and ADLS approval for the sign.

Mr. Wyatt stated there would be a total of nine cars which would include the employees and he did not feel there would be an impact on traffic.

Mrs. Barton-Holmes confirmed the sign would need ADLS approval.

Mr. Hawkins asked about sign placement and tree removal.

Mr. Wyatt stated that the sign would be on Smokey Row Road and indicated the area on the photograph. Trees would not be removed along U.S. 31 for visibility. Some of the trees right behind the house may be removed for purposes of parking.

Jennifer Butts, 11291 E. 100 North, Sheridan. Scott Brewer had met with her at the site and they discussed the things that needed to be removed.

Mr. Potasnik moved to approve **Docket No. 06030023UV, Hay's Addition, Lot 1 – Hair Salon**. The motion was seconded by Mrs. Torres and **APPROVED 4-0**.

**12h. Crooked Stick Estates, Sec 6, lot 100**

The applicant seeks approval for the following development standards variance:

**Docket No. 06030026 V      ZO Chapter 25.01.01.B.3.ii      accessory building setback**

The site is located at 1558 Preston Trail and is zoned S-1/Residence.

Filed by Dillon Construction Group for John & Jennifer Rulli.

Present for the Petitioner: Mike Morrison, Dillon Construction, 6828 Hillsdale Court, Indianapolis. A 50-foot setback is required and they would like to encroach 6.5 feet for a 2-car garage. They have the

Homeowners Association's approval. A site plan was shown. A covered trellis will join the garage to the house. The brick will match the existing house.

Members of the public were invited to speak in favor or opposition to the petition; no one appeared.

The Public Hearing was closed.

Mrs. Barton-Holmes gave the Department Report. This would be a minimal encroachment and the overall site design would help to preserve more trees. The Department recommended positive consideration.

Mr. Hawkins moved to approve **Docket No. 06030026 V, Crooked Stick Estates, Sec 6, lot 100**. The motion was seconded by Mrs. Torres and **APPROVED 4-0**.

**13h. TABLED Stonegate Apartments off-premise sign**

The applicant seeks approval for the following development standards variance:

**Docket No. 06020018 V      ZO Chapter 25.07.01-04      off-premise sign in road right of way**

The site is located just north of Meadow Lane & Main Street and is zoned R-4/Residence.

Filed by Larry Kemper of Nelson & Frankenberger.

**1-4h. Baby Tracts, lots 20-21 - St. Mary & St. Mark Coptic Orthodox Church**

Petitioner seeks Special Use amendment approval & variances to expand a church parking lot.

**Docket No. 05090019 SUA      Chapter 9.02.A      Special Use expansion**

**Docket No. 05090020 V      Chapter 23E.07.C.1      parking in front yard**

**Docket No. 05090021 V      Chapter 23E.07.C.2      no parking lot curbing**

**Docket No. 05090022 V      Chapter 9.04.03.F      over 35% lot coverage**

The site is located at 800 E 110th Street and is zoned R-3/Residence within the Home Place District Overlay Zone. Filed by Robert Epstein of Epstein, Cohen, Donahue & Mendes.

Present for the Petitioner: Bob Epstein, Epstein, Cohen, Donahue & Mendes, 50 S. Meridian Street, Suite 505, Indianapolis. The church had gone to Noblesville for approval to expand the parking lot to accommodate the additional church members. They later found out they needed approvals from the City of Carmel. They asked for the variances to be approved and adopt the Findings of Fact. They have a landscape plan and they intend to meet with the Urban Forester.

Members of the public were invited to speak in favor or opposition to the petition; no one appeared.

The Public Hearing was closed.

Mrs. Barton-Holmes gave the Department Report. This is an expansion of an existing use. The Petitioner is continuing to work with Scott Brewer, the Urban Forester. The Department recommended positive consideration of the four variances.

Mrs. Torres moved to approve **Docket Nos. 05090019 SUA through 05090022V, Baby Tract, lots 20-21 – St. Mary & St. Mark Coptic Orthodox Church** with the **CONDITION** that the landscape plan meets the approval of Scott Brewer, the Urban Forester. The motion was seconded by Mrs. Plavchak and all four variances were **APPROVED 4-0**.

**J. New Business**

There was no New Business.

**K. Adjourn**

Mrs. Torres moved to adjourn. The motion was seconded by Mr. Hawkins and **APPROVED 4-0**. The meeting adjourned at 8:50 PM.

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James R. Hawkins, President

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Connie Tingley, Secretary